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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,895	03/24/2004	Eduardo Ramirez de Arellano	LOSAS-0600	5350
7590 11/04/2004			EXAMINER	
Patent Law Of	fices of		HORTON, YVO	NNE MICHELE
Heath W. Hoglu	ınd			
256 Eleanor Ro	osevelt		ART UNIT	PAPER NUMBER
San Juan, PR 00918			3635	
•			DATE MAIL ED: 11/04/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary 10/807.855	<u>.</u>							
## Comment Searminer Art Unit 3635		Application No.	Applicant(s)					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Educations of interrap to available under the provisions of 3 CFR 1.13(6). In no event however, may a reply be timely filed Education of interrap to available under the provisions of 3 CFR 1.13(6). In no event however, may a reply be timely filed The period for reply specified above its less bins hirty (30) days, as reply within the statehory minimum of thirty (30) days, as reply within the state of the common ANAHOMED (33) U.S. C. § 133). If the period for reply specified above its less bins hirty (30) days, as reply within the state of the common ANAHOMED (33) U.S. C. § 133). If No period for sply is specified above its less bins hirty (30) days, as reply within the state of the common ANAHOMED (33) U.S. C. § 133). If No period for sply is specified above. It is maintained to reply with the state of the common ANAHOMED (33) U.S. C. § 133). If No period for sply is specified ones the septimization is provided by the state of the common ANAHOMED (33) U.S. C. § 133). If No period for sply is specified to common and the septime of the common ANAHOMED (33) U.S. C. § 133). If No period for sply is specified to common and the specified of the th	Office Action Summary		EDUARDO					
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U.S. Patent and Trademark Office PTOL-326 (Rev. 1-04) Application/Control Number: 10/807,895

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DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,6-8 and 10-13 are rejected under the judicially created doctrine of double patenting over claims 1-4 of U. S. Patent No. 6,746,717 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a method of applying concrete including the steps of mixing concrete mortar having particles approximately 1mm in diameter and water to form a resulting composition that hardens; applying the composition to an exterior of a building; allowing the composition to harden in time to prevent reformation; and scraping a rough trowel against the resulting composition to remove at least a portion of the 1mm particles. '717 claims the basic method except for including the step of forming divots. Although '717 is silent in this regard, it would have been obvious to one having ordinary

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skill in the art at the time the invention was made that once the 1mm particles are removed, a small recess, divot, or imprint would be left where the particle sat prior to removal. Regarding claims 6,10 and 11, it too would have been obvious that the composition is applied via a trowel. In reference to claims 7, spraying is also another obvious and well known method for applying a substance to a surface. Regarding claims 12 and 13, it is very well known in the ar for a concrete material to contain an accelerant and a plasitizer.

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Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Examiner

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September 30, 2004